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Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

IN THE MATTER OF: :
: Docket No.
: 2012-6 CRB CD 2004-
Distribution of the 2004- : 2009 (PHASE II)
2009 Cable Royalty Funds :
: :
: :
IN THE MATTER OF: :
: Docket No.
Distribution of the 1999- : 2012-7 CRB SD 1999-
2009 Satellite Royalty : 2009 (PHASE II)
Funds :
: :
: :

VOLUME III

Wednesday,
April 15, 2015
Room 1M-408
Madison Building
Library of Congress
101 Independence Avenue, S.W.
Washington, D.C.

The above-entitled matter came on for
hearing, pursuant to notice, at 9:09 a.m.

BEFORE:

THE HONORABLE SUZANNE M. BARNETT,
Copyright Royalty Judge
THE HONORABLE JESSE FEDER
Copyright Royalty Judge

THE HONORABLE DAVID R. STRICKLER
Copyright Royalty Judge

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1 MR. BOYDSTON: Thank you, Your Honor.

2 (Pause.)

3 JUDGE BARNETT: Ms. Plovnick, was
4 there something in Mr. Galaz's oral testimony
5 that was not in any of his written material?

6 MS. PLOVNIK: He expanded at great
7 length yesterday, I think, of things on issues
8 that -- but I think the topic was in his written
9 testimony, but he expanded on it yesterday in
10 oral testimony. I will also add that we have a
11 pending motion to strike his whole testimony, and
12 not prevent him to testify.

13 And we said in there that we would
14 need to call Ms. Saunders as a rebuttal witness
15 if that motion were granted, but the motion
16 remains pending. So this was another reason why,
17 you know, we had to do this, because if Mr. Galaz
18 had not testified or had not raised any of those
19 issues in oral testimony, or admitted his written
20 rebuttal testimony, we wouldn't have had to do
21 this today.

22 MR. BOYDSTON: Your Honor, they knew

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1 before they started what your position was on the
2 motions, that the motions would be decided later
3 on. So during their direct case, they knew that
4 Mr. Galaz was going to get up and testify.

5 Moreover, I'd like to know what
6 subject is new in his oral testimony, because
7 there wasn't anything new. Ms. Plovnick said he
8 went into more detail. I don't know what he went
9 into more detail about. I think what this is
10 going to be about is issues involving the
11 Canadian Copyright Collective. That was front
12 and center --

13 JUDGE BARNETT: Well, Mr. Boydston,
14 you just said I don't know what it was, and then
15 you went about supposing that it might be.
16 Please don't.

17 MR. BOYDSTON: All right, I won't.
18 You're right. I'm guessing, okay.

19 JUDGE BARNETT: Not a good idea.

20 MR. BOYDSTON: No. Perhaps Ms.
21 Plovnick can tell us all what she's referring to,
22 because she didn't specify.

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1 JUDGE BARNETT: Well, I don't think
2 she needs to, because I think that under the
3 circumstances, since we had motions filed on the
4 eve of the hearing and we haven't been able to
5 rule on them or read any responses to them, we
6 have to hear all of the testimony and then
7 conclude after the hearing, after reading your
8 responses and replies, which of it will stay in
9 the record and which will not.

10 MR. BOYDSTON: I understand, Your
11 Honor. It's just that they -- you said that
12 before they went into their case, and they
13 therefore knew that you were withholding your
14 ruling in abeyance when they were in their direct
15 case. Yet for tactical reasons, it appears they
16 held back their witnesses anyway.

17 JUDGE BARNETT: And I heard that when
18 you said it the first time, Mr. Boydston. Your
19 objection's overruled, and Ms. Saunders can
20 testify under the circumstances. As I said, we
21 did not choose for all of these motions to come
22 in on the eve of the hearing. But those are the

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1 facts we work with. We didn't make the facts.

2 So Ms. Saunders can testify in
3 response to Mr. Galaz's specific representations
4 that caused your heartburn, Ms. Plovnick.

5 MS. PLOVNIK: Thank you, Your Honor.

6 MR. BOYDSTON: Does that mean that if
7 there are new things or things that are expounded
8 on by Ms. Saunders, we may have an opportunity to
9 similarly bring Mr. Galaz back up?

10 JUDGE BARNETT: Well it says the
11 parties will have a brief opportunity to respond
12 to points raised in written rebuttal statements
13 or oral testimony of other witnesses. We didn't
14 make this stipulation either. You guys did,
15 okay. Okay.

16 MS. PLOVNIK: MPAA calls Ms. Saunders
17 to the stand.

18 JUDGE BARNETT: Please raise your
19 right hand.

20 Whereupon,

21 JANE SAUNDERS

22 was called as a witness and, after having been

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1 first duly sworn, was examined and testified as
2 follows:

3 JUDGE BARNETT: Please be seated.

4 REBUTTAL DIRECT EXAMINATION

5 BY MS. PLOWNICK:

6 Q Ms. Saunders, would you please state
7 your name and spell it for the record?

8 A Jane Saunders, J-A-N-E, S-A-U-N-D-E-R-
9 S.

10 Q Now Ms. Saunders, I know you testified
11 already in this proceeding during the preliminary
12 hearing, so we're going to keep this very brief.
13 Just to refresh our memories, let me ask you a
14 few background questions. Are you currently
15 employed by the MPAA?

16 A Yes, I am.

17 Q And what's your position there?

18 A I'm the senior vice president, Rights
19 Management and Policy.

20 Q How long have you been in that
21 position?

22 A I've been in that position as a senior

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1 vice president for seven years. I have worked
2 for the MPAA just over 20 years.

3 Q At MPAA, are you responsible for
4 managing their retransmission royalty program in
5 the U.S. and internationally?

6 A Yes, I am.

7 Q And you testified before at the
8 preliminary hearing as to all the countries that
9 you're involved with. But just to recap, that
10 includes Canada and Europe; is that correct?

11 A Yes.

12 Q All right.

13 A All the countries of Europe.

14 Q All the countries in Europe. So are
15 you involved in any collection societies or
16 royalty collectives in those countries?

17 A Yes, I am.

18 Q Which ones?

19 A I directly supervise the Copyright
20 Collective of Canada, otherwise known as CCC, and
21 I am a board member, one of 11 on the Executive
22 Committee, now called the Executive Board of

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1 AGICOA.

2 Q Now is MPAA responsible for royalty
3 distributions in Australia?

4 A No.

5 Q So Ms. Saunders, in your written
6 direct testimony in these proceedings, which was
7 admitted at the preliminary hearing, you
8 discussed the use of viewing by certain
9 international collectives; is that correct?

10 A Actually, in Canada I discussed the
11 use of viewing by the Copyright Royalty Board,
12 which is the equivalent of this body in Canada,
13 and I did discuss viewing as used by AGICOA in
14 Geneva.

15 Q Now Ms. Saunders, are you aware that
16 Mr. Galaz submitted written rebuttal testimony in
17 this proceeding?

18 A Yes, I am.

19 Q Have you reviewed Mr. Galaz's
20 testimony?

21 A I did.

22 Q Do you agree with Mr. Galaz's

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1 statements about the use of viewing by the
2 Copyright Royalty Collective in Canada and
3 AGICOA?

4 A By the CCC, no, I do not agree with
5 that or with his statements with regard to
6 AGICOA's non-use of viewings.

7 Q Can you explain why not?

8 A Well, it was my understanding -- it is
9 my understanding that both CCC and AGICOA rely on
10 viewing in some measure, to some degree, in
11 distributing royalties their claimants.

12 Q So when you reviewed Mr. Galaz's
13 testimony, what if anything did you do?

14 A I was surprised to see the references,
15 that he had frequent contacts at CCC that
16 confirmed to him that viewing was absolutely not
17 relied upon, and I was surprised by his reference
18 to AGICOA. I think he referred to a website
19 reference, in which he said that it was clear
20 from that AGICOA website that viewing was not
21 relied upon as a basis for distribution.

22 Q So did you take any action as a

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1 result?

2 A I did, I did. I contacted both the
3 executive director of CCC, Lucy Medeiros, and the
4 managing director of AGICOA, Tom De Lange, and I
5 asked them if they would be willing to look at
6 the relevant portions of Mr. Galaz's rebuttal
7 testimony, that affected each of their
8 organizations.

9 Q And did they look at Mr. Galaz's
10 testimony?

11 A They did, they did.

12 Q So -- and I think you said, but who is
13 Lucy Medeiros again?

14 A She's the executive director of the
15 Copyright Collective of Canada.

16 Q And who is Tom De Lange?

17 A He is the managing director. It's
18 essentially the same function at AGICOA. They
19 are in charge of the entirety of the company and
20 the operations.

21 Q How Ms. Saunders, can you please look
22 at the orange binder that's over there next to

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1 you, and flip to MPAA --

2 A It's not in English.

3 Q Yes. This one -- if I may approach
4 the witness, I can help her.

5 JUDGE BARNETT: You may.

6 BY MS. PLOWNICK:

7 Q So you can find the one that's French.

8 A Okay. Here it is. Okay.

9 Q So if you could please flip to MPAA
10 Exhibit 374 --

11 JUDGE BARNETT: -- 374.

12 MS. PLOWNICK: These are additional
13 exhibits that we added prior to the hearing and I
14 brought them in and gave them to Ms. Whittle, and
15 hopefully they have now made it, now to your --

16 MR. BOYDSTON: Not to my --

17 MS. PLOWNICK: Not to your -- well we
18 also submitted a revised PDF that included those
19 as well, so --

20 (Off microphone discussion)

21 MS. PLOWNICK: I think Judge Barnett's
22 binder was updated. Oh, so that when I did that,

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1 I don't know if we had everyone else's binder at
2 the time, but Ms. Whittle has copies.

3 JUDGE STRICKLER: Judge Feder's
4 holding his binder in his hand. He's holding all
5 of the binders in his hand.

6 (Simultaneous speaking.)

7 JUDGE FEDER: -- have you updated the
8 exhibit?

9 MS. PLOWNICK: All right. And I can
10 give you, if you would like the paper copies I
11 have in mine.

12 JUDGE BARNETT: We can share.

13 MS. PLOWNICK: Thank you.

14 JUDGE BARNETT: Go right ahead.

15 BY MS. PLOWNICK:

16 Q All right. Ms. Saunders, what is MPAA
17 Exhibit 374?

18 A It is a declaration from Lucy
19 Medeiros, Executive Director of the Copyright
20 Collective of Canada.

21 Q And is this the declaration that Ms.
22 Medeiros sent to -- based on your solicitation or

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1 request?

2 A I -- as I said, I contacted each of
3 Lucy Medeiros and Tom De Lange when I read the
4 rebuttal testimony, and I asked each of them to
5 inform me whether the statements made by Mr.
6 Galaz in that testimony were, his testimony were
7 accurate.

8 After reviewing that testimony, they
9 responded to me directly that several of the
10 statements in his testimony were not accurate,
11 and I asked each of them in turn if they would
12 discuss with my counsel, providing a declaration
13 in this proceeding, to correct the record, and
14 they each agreed. At that point I turned it over
15 to you guys.

16 Q So MPAA Exhibit 374 is the declaration
17 that was received by Lucy Medeiros?

18 A Correct.

19 Q And MPAA Exhibit 375, which is the
20 next exhibit in the binder --

21 A Yes.

22 Q Is that the declaration that was

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1 received from Tom De Lange?
 2 A Yes, it is.
 3 MS. PLOVNIK: MPAA moves to admit
 4 MPAA Exhibits 374 and 375.
 5 MR. BOYDSTON: Your Honor, we object.
 6 These witnesses are not here to be cross-
 7 examined. They were never designated as
 8 witnesses at any point. The declaration
 9 obviously is hearsay.
 10 I know we have a liberal policy of
 11 hearsay, declarations have been admitted many
 12 times, both submitted by ourselves and by MPAA
 13 and SDC and I understand all that, but you have
 14 excluded declarations at certain times, and I
 15 think this is that sort of a time, particularly
 16 because these are witnesses who are testifying
 17 about controverted facts, and making very
 18 specific accusations about the truth of the
 19 statements of another witness, and I have no
 20 opportunity to cross-examine them. And on that
 21 basis, I object to their admission.
 22 MR. MACLEAN: No objection.

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1 JUDGE BARNETT: Ms. Plovnick?
 2 MS. PLOVNIK: Yes, Your Honor we
 3 would simply state that in the preliminary
 4 hearing we were permitted to offer declarations
 5 of witnesses that were not present, in response,
 6 in responding to things that were raised in
 7 written rebuttal statements.
 8 We see this is a similar situation.
 9 This is a response to assertions made in a
 10 written rebuttal statement. These declarations
 11 are also attached as exhibits to our motion to
 12 strike, and we -- as we said in there, we --
 13 should our motion to strike be granted, we
 14 wouldn't have needed to call Ms. Saunders or to
 15 bring in these declarations, but there has not
 16 yet been a ruling on the motion to strike. So we
 17 are offering them as exhibits.
 18 MR. BOYDSTON: Your Honor, we received
 19 them three business days ago. Again, more
 20 important at that, unlike the declarations that
 21 you have traditionally admitted in the claims
 22 proceeding aspect, these go to substantive issues

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1 about what other witnesses are saying. Most of
 2 those declarations were people saying yes, I
 3 signed a document. This is different.
 4 JUDGE BARNETT: I tend to agree with
 5 you, Mr. Boydston, but in an abundance of
 6 caution, because we do have these pending
 7 motions, I'm going -- we're going to reserve on
 8 these two and we'll wait and see what the motions
 9 say, what the responses say, and then go from
 10 there. So if you have any other questions for
 11 Ms. Saunders you may proceed, but we'll reserve
 12 on whether these are admitted or not.
 13 (Whereupon, ruling was reserved on the
 14 admission of above-referred to document marked as
 15 MPAA Exhibits No. 374 and 375.)
 16 MS. PLOVNIK: May the witness refer
 17 to them, since your ruling is reserved? Or --
 18 JUDGE BARNETT: Yes. They're -- yes.
 19 It'll be entered in the record if we need it and
 20 out of the record if we don't, or disregarded if
 21 we don't. It won't be out of the record.
 22 BY MS. PLOVNIK:

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1 Q So Ms. Saunders, did you have
 2 conversations with Lucy Medeiros before she
 3 executed the declaration?
 4 A The conversation I had with Lucy
 5 Medeiros was as I think I just said, that I asked
 6 her to refer -- review Mr. Galaz's testimony in
 7 regards to the statements about CCC and the use
 8 of viewing, and I asked her to be in touch with
 9 my counsel to provide an alternative to -- to
 10 provide accurate information in response to the
 11 points that he made in his rebuttal.
 12 Q And does Ms. Medeiros provide that
 13 accurate information in her declaration?
 14 A She does. She told me and Ms. --
 15 MR. BOYDSTON: Your Honor, I object to
 16 this as hearsay, number one, and number two, the
 17 document, if it's admitted, speaks for itself.
 18 THE WITNESS: Let me say it another
 19 way.
 20 JUDGE BARNETT: Sustained. Do you
 21 have another question, Ms. Plovnick?
 22 BY MS. PLOVNIK:

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1 Q Ms. Saunders, do you know what the
2 accurate CCC loyalty distribution, or what the
3 accurate statements are, about CCC's
4 distribution?

5 A That CCC --

6 MR. BOYDSTON: Your Honor, I -- could
7 we have a little more specificity? I object on
8 the grounds it's ambiguous, or leading.

9 JUDGE BARNETT: I don't think it's
10 leading but it is a little ambiguous. Could you
11 restate the question, Ms. Plovnick?

12 BY MS. PLOVNIK:

13 Q So Ms. Saunders, you said that you
14 spoke with Ms. Medeiros regarding this, and you
15 asked her to correct the record. Are you aware
16 what statements Ms. Medeiros identified that
17 needed to be corrected?

18 MR. BOYDSTON: Your Honor, objection.
19 This is the same question, asking her to
20 basically parrot what Ms. Medeiros said.

21 MS. PLOVNIK: I asked if she's aware.

22 JUDGE BARNETT: Sustained.

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1 BY MS. PLOVNIK:

2 Q So Ms. Saunders, are you aware of
3 whether the CCC relies on program viewership
4 ratings for --

5 A Yes I am, and yes it does --

6 Q Can you provide --

7 A -- rely on viewership.

8 Q Can you please explain how it does?

9 A The CCC methodology, one of the
10 factors of the CCC distribution methodology
11 relies on program viewership ratings.

12 Q And with regard to AGICOA --

13 JUDGE STRICKLER: Excuse me. I'm
14 sorry, before you go to AGICOA, to your
15 understanding, does the CCC rely on viewership
16 only if, when it's doing the simulcast rating?

17 THE WITNESS: No, Your Honor, it is
18 not, that is not my understanding. I have to
19 confess, the simulcast issue is, for me, a little
20 -- not unclear, but I have never fully -- the way
21 I understand the simulcast issue is that CCC is,
22 attempts to minimize or discount programs when

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1 there is a simulcast, when they're shown
2 distantly in more than two markets at the same
3 time.

4 JUDGE STRICKLER: Well actually,
5 they're, so I understand it, you're here to
6 authenticate the, Ms. Medeiros declaration, or
7 this declaration?

8 THE WITNESS: Yes.

9 JUDGE STRICKLER: Her declaration.
10 You're not here to testify as to how the CCC
11 handles it. It's through her declaration that
12 we're learning about the corrections to Mr.
13 Galaz, the alleged corrections to Mr. Galaz's
14 statements?

15 THE WITNESS: It is certainly true
16 that I'm here to support the declaration or
17 introduce the declaration. That is correct. I
18 am also, however, able to say as a general
19 matter, that CCC relies upon viewing when it
20 performs its distribution, and I can say that in
21 my capacity as supervisor of Lucy Medeiros of the
22 CCC. In other words --

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1 JUDGE STRICKLER: I'll tell you what.

2 Excuse me. I'll tell you my confusion, because
3 in Article 8 of the CCC that you, that's
4 referenced in the declaration and that you
5 referenced, the concept of viewing rate is not
6 mentioned with regard to the relative amount of
7 viewing until after the simulcast weighting,
8 isn't that right?

9 THE WITNESS: That is -- I believe
10 there's an order of go in terms of how they apply
11 their factors. That's correct. I would love to
12 see Article 8 because I think, to me the relevant
13 portion of --

14 MS. PLOVNIK: I believe that's --

15 JUDGE STRICKLER: Still of --

16 MS. PLOVNIK: -- an item of IPG's
17 exhibits.

18 JUDGE STRICKLER: IPG Exhibit 163, if
19 somebody could put that in front of the witness.

20 MS. PLOVNIK: 163, if I may approach.

21 JUDGE BARNETT: Is it -- I think it's

22 --

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1 MS. PLOVNIK: Well that's --
 2 JUDGE BARNETT: They have to be
 3 numbered. I don't see a one.
 4 MS. PLOVNIK: It's --
 5 MR. BOYDSTON: The first exhibit in
 6 the second binder. May I approach, Your Honor?
 7 JUDGE BARNETT: You may. We would --
 8 it's not too --
 9 MS. PLOVNIK: It's the first exhibit.
 10 MR. BOYDSTON: The first in the second
 11 binder.
 12 JUDGE BARNETT: Okay, got it. We got
 13 -- thank you. Okay, so we're talking about
 14 Article 8.
 15 THE WITNESS: So, there go -- it goes
 16 through a narrative that attempts to describe in
 17 as best as a distribution rule can describe, how
 18 the weights are -- how the distribution is
 19 undertaken, and how each show is compensated, or
 20 how royalties are allocated to each show that is
 21 paid for.
 22 And it goes -- as I said, there's an

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1 order of go in terms of how they --
 2 JUDGE STRICKLER: Are you saying, an
 3 order of go?
 4 THE WITNESS: Yes.
 5 JUDGE STRICKLER: What does that mean?
 6 THE WITNESS: I'm sorry, yes. So,
 7 they determine the viewing rate. The way it
 8 works, weight is calculated starting with the
 9 determination of its supply weight, next the
 10 simulcast weight, if any. I don't think that
 11 every show has a simulcast weight, or maybe they
 12 all do but some of them have -- there's no
 13 diminution because there's no simulcast.
 14 And then, after all of that, dot da
 15 dot da dot, the viewing rate, let me read this,
 16 the last sentence --
 17 JUDGE STRICKLER: The viewing rate,
 18 the penultimate sentence, actually?
 19 THE WITNESS: The penultimate
 20 sentence, yes sir. Yes. The viewing rate is
 21 then calculated by multiplying the simulcast rate
 22 by viewing factors which reflect the relative

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1 amount of viewing of CCC shows on distant signals
 2 on the applicable day of the week and during the
 3 applicable time period when the retransmission
 4 occurs.
 5 JUDGE STRICKLER: So because that
 6 sentence makes reference to multiplying the
 7 viewing rate by simulcast weight, does that not
 8 mean that that concept only applies when you have
 9 a simulcast weighting?
 10 THE WITNESS: Well it -- yes, except
 11 that I believe that some of the simulcast
 12 weightings are basically zero, or maybe it's a
 13 hundred. In other words, there's no -- when this
 14 -- the simulcast weight is always applied but
 15 sometimes the simulcast weight has no influence,
 16 has no relevance because there is no simulcast,
 17 because not every distantly retransmitted show,
 18 in my understanding, is simulcast.
 19 JUDGE STRICKLER: But if the simulcast
 20 weight was zero, that sentence says the viewing
 21 rate is then calculated by multiplying the
 22 simulcast weight. That would give a program zero

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1 viewing rate --
 2 THE WITNESS: Yes.
 3 JUDGE STRICKLER: -- which doesn't
 4 make any sense.
 5 THE WITNESS: I totally agree with
 6 Your Honor and I wish that I understood more
 7 about the mechanics. What I understand is in a,
 8 in the sense of words, not of numbers, and it is
 9 as I have, I am trying to explain, is that if
 10 there is no simulcast, there is no impact of
 11 simulcast diminution in the royalty value based
 12 upon a simulcast if one does not occur.
 13 JUDGE STRICKLER: Okay.
 14 THE WITNESS: That's the best way that
 15 I can articulate that. But that the viewing, the
 16 relative amount of viewing, on the applicable day
 17 of the week and during the applicable time
 18 period, is also relevant, as is said in the
 19 penultimate sentence.
 20 JUDGE STRICKLER: Thank you.
 21 BY MS. PLOVNIK:
 22 Q Ms. Saunders, with regard to AGICOA,

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1 I believe you testified at the preliminary
2 hearing that you're on the board of AGICOA?

3 A Yes.

4 Q So Ms. Saunders, are you aware if --
5 does AGICOA use program viewing measurements?

6 A As a matter of fact, I am extremely
7 aware of that, not only in my capacity as a board
8 member but also in my, from my days as being on
9 the Identification Commission from AGICOA, and
10 having been as a board member, we are all
11 informed of any promulgation of distribution
12 rules, of updating of distribution rules, and so
13 I am extremely aware of the AGICOA distribution
14 program, and I know that they take account of
15 viewing, and wherever possible, I also know,
16 because I'm also on the finance committee of
17 AGICOA and I therefore am involved in the budget,
18 including budgeting items for purchasing of
19 viewing, that viewing is purchased wherever
20 possible and used per program.

21 Q So, Ms. Saunders, could you please
22 turn to IPG Exhibit 152, which I think may be in

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1 the other IPG binder, if I may approach. I will
2 --

3 JUDGE BARNETT: Yes.

4 MS. PLOVNICK: -- see if I can seek
5 out that one.

6 THE WITNESS: Oh wait. That one I
7 have to -- wait, one?

8 BY MS. PLOVNICK:

9 Q 152?

10 A Oh I'm sorry. There's some numbers on
11 the back and some on the front. That's what was
12 confusing. Okay. Yes.

13 Q And what is IPG Exhibit 152?

14 A It appears to be -- oh, it is a page
15 lifted from the -- copied from the website of
16 AGICOA, which addresses the distribution rules of
17 AGICOA.

18 Q Is there any language on IPG Exhibit
19 152 that makes reference to viewing?

20 A There is, there is, there is. I'm
21 just trying to find -- I know there's a reference
22 to use of audience data, but I cannot lay my

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1 fingers on it at this moment. Oh, wait a minute.

2 One second.

3 Q Ms. Saunders, if you could look at the
4 first page of Exhibit -- IPG Exhibit 152.

5 A The first page?

6 Q That's the exhibit that I have in my
7 binder.

8 A It says, definition of work, what
9 times of work can I declare.

10 Q Oh, you know, I may have a different
11 number.

12 A Oh, I'm so sorry. I was looking at
13 the wrong page. Now I see it. Okay. Yes, I do.
14 There I thought I was losing my mind for a
15 second, so yes.

16 Q And what language --

17 A In the matching of broadcasts, on the
18 first page of IPG Exhibit 152, in the second
19 paragraph, matching of broadcasts, the words are,
20 "Having allocated royalties to broadcasts on the
21 basis of duration and audience, AGICOA then
22 identifies the right holders for each of the

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1 broadcasts based on their declared rights on
2 audio visual work." I can see that language on
3 the website needs some updating since the grammar
4 is not great there.

5 Q But so, what does the use of the word,
6 audience mean in that sentence?

7 A It means the measured audience for the
8 viewing.

9 MS. PLOVNICK: All right. I have no
10 further questions for Ms. Saunders at this time.

11 JUDGE BARNETT: Mr. MacLean, any
12 questions for Ms. Saunders?

13 MR. MACLEAN: No, Your Honor.

14 JUDGE BARNETT: Mr. Boydston?

15 MR. BOYDSTON: Yes, Your Honor. Thank
16 you.

17 CROSS-EXAMINATION:

18 BY MR. BOYDSTON:

19 Q Good afternoon, Ms. Saunders. I'm
20 Brian Boydston, counsel for IPG. Let me ask you
21 to look at Article 8 again.

22 A I do.

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1 Q And before we get into the specifics
2 of that -- well, no. Let's get into the
3 specifics of that. Okay, now temporary, could
4 you just --

5 MR. MACLEAN: Your Honor, what is the
6 exhibit number?

7 MR. BOYDSTON: I don't -- beg your
8 pardon, Your Honor. It is Exhibit 163.

9 MR. MACLEAN: Thank you.

10 MR. BOYDSTON: And it's the third
11 page.

12 MR. MACLEAN: Got it.

13 BY MR. BOYDSTON:

14 Q Now, the first sentence I'll read,
15 "Allocations of all royalties to be given work
16 are determined by the work share of the combined
17 weight of all works in CCC's data for that year"
18 dash, "the work's Viewing Weight." And the
19 viewing weight is capitalized, correct? My
20 understanding is because viewing weight is
21 capitalized, it's being characterized as a term
22 of art. Is that your understanding?

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1 A I --

2 Q Or a defined term, I should say, not
3 a term of art.

4 A I do not take that to be a defined
5 term, quite honestly, Mr. Boydston. I don't. I
6 have no -- it's capitalized, yes. It may be, but
7 I don't even think it's a term of art, quite
8 frankly.

9 Q Well, they're not -- the next sentence
10 says, "Each work's weight reflects its duration,
11 the number" -- let me stop there. By duration,
12 do you interpret that to be something other than
13 its length?

14 A No, I do not.

15 Q Then it continues, "the number of
16 Canadian retransmitters subscribers that received
17 the work on a distant television signal," -- I'll
18 stop there. Would you agree with me that that
19 means essentially what it says? It's a tally of
20 how many subscribers could have seen the work in
21 question, because they were subscribers?

22 A I do not know if it could -- if it's

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1 subscribers that could have received the signal,
2 no. It could be the subscribers that actually
3 did, based on --

4 Q And that makes you -- what in that
5 phrase suggests that to you?

6 A My comprehension of the English
7 language.

8 Q Okay. Then it continues, "and the
9 share of overall viewing experienced in the day
10 part of the day of the week and in the season
11 when the work was retransmitted." Now, that last
12 phrase, is it your interpretation that that
13 refers to something other than the amount of
14 people viewing -- or excuse me, the day part in
15 which it was viewed?

16 A Okay. So the share of overall viewing
17 experienced in the day part on the day of the
18 week in the season, in the day of the week and in
19 the season when the work was retransmitted. What
20 -- you're asking me if I understand that to refer
21 to audience or viewing? Because I do.

22 Q Do you think it refers to ratings?

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1 A Measured viewing.

2 Q Well, yes or no?

3 A Yes.

4 Q Now, do you actually make computations
5 pursuant to Article 8?

6 A Never in my whole life. I pray to God
7 that doesn't happen.

8 Q Have you ever been involved with
9 people who were doing it or overseen it,
10 specifically?

11 A No, never specifically.

12 Q Now, it continues for another couple
13 of sentences, and then in the middle of the
14 paragraph it says, "Next, the simulcast weight" --
15 -- you see that?

16 A Yes.

17 Q "-- is determined by adjusting supply
18 weight," and it continues. Is it your -- strike
19 that. Do you know what simulcast weight means?
20 Now there is words here that describe it, but do
21 you have an understanding of it yourself?

22 A It means that no value is added if you

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1 continue on in this article.

2 Q Well actually what I'm asking if you
3 know what simulcast weight is to begin with?

4 A Yes. Simulcast weight, as I was
5 attempting very unartfully to explain to Judge
6 Strickler, has to do with a diminution of value
7 to the extent -- in the royalties paid to the
8 extent that the work is broadcast, or
9 retransmitted, excuse me, in more than one
10 distant market at the same time.

11 Q And so, the simulcast weight, I think
12 what your saying is, is only a factor if, in
13 fact, there's a simulcast circumstance going on?

14 A That is my understanding, yes.

15 Q And that's what's said, I think, in
16 the second to last sentence, which begins, "The
17 viewing weight is then calculated," correct, "by
18 multiplying the simulcast weight by viewing
19 factors," correct?

20 A Yes.

21 Q So in other words, the second to last
22 sentence is saying, if there is a simulcast

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1 weight, then we multiply it by the viewing
2 weight, correct?

3 A If there is a simulcast weight, I
4 believe -- well, you know, I can't really opine.
5 I was going to say that I believe -- I think I
6 know how it's done, but I'm not going to opine
7 because I'm not certain. I've never directly
8 done it myself.

9 Q Okay. You'd agree with me that the
10 word ratings doesn't appear anywhere in here,
11 does it?

12 A No, but that has --

13 Q Well is that -- does it appear or not?
14 That's my question.

15 A No, it does -- absolutely, the word
16 ratings never appears.

17 Q Okay.

18 A Or on the AGICOA website, for that
19 matter.

20 Q Let's turn to the AGICOA website.
21 That would be Exhibit 152. And now, on this
22 first page here, I don't see anything here that

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1 discusses any analysis on a program by program
2 basis.

3 A No, because the distribution rules are
4 written in a fairly general way, they're not
5 updated on the website as frequently as they are
6 updated in live, in real life.

7 Q Okay. Are you familiar enough -- are
8 you generally familiar with the AGICOA criteria
9 for this distribution?

10 A I'm extremely familiar with the AGICOA
11 criteria, for all the reasons I said when I was
12 talking to Ms. Plovnick.

13 Q And part of that criteria is a
14 function of day part viewing, is it not?

15 A No. It is -- well, let me rephrase.
16 In cases where AGICOA is able to buy program-
17 specific viewing, so I Love Lucy is -- which I
18 believe isn't transmitted any more, but let's
19 just use that, is retransmitted in Germany on X
20 day at that time, if those ratings, if that
21 audience measurement is available to buy it is
22 purchased and used, and that's why the language

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1 here in the middle says, "Having allocated
2 royalty broadcast to broadcast on the basis of
3 duration and audience, AGICOA then identifies,"
4 et cetera, et cetera.

5 Q And again, audiences are defined,
6 audience means, could mean --

7 A No, it couldn't --

8 Q Well let me -- I haven't even put it
9 into a question yet. I know what you said you
10 think audience means, but again, the word ratings
11 doesn't appear in here, anywhere in this, that
12 particular page, does it?

13 It doesn't say that -- in that
14 particular page, I think you'd agree with me that
15 in that particular page, it doesn't say that the
16 -- that when they refer to audience, they're
17 measuring audience by ratings as opposed to by
18 day part or some other factor. Would you agree
19 with me there?

20 A What I would agree with is that --

21 Q Well that's, that's depending on --
22 again, that's the question. Do you agree with me

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1 that that is not --

2 A I would not, I would not agree. I
3 would agree that someone who picked up the
4 website and looked at it might possibly draw that
5 conclusion, yes.

6 Q Thank you. Because in that page, the
7 words ratings don't appear, correct?

8 A That's right.

9 Q Okay. Let's move on to the same
10 exhibit, and that, the pages aren't really
11 numbered, so I'm going to have to count. It
12 would be, let's see, one, two, three, four, five,
13 six, seven, eight, nine, the ninth page. At the
14 top it says, remuneration.

15 A Got it.

16 Q And the -- and this is a bunch of
17 question and answers, and the third from the
18 bottom, there is a question that says, "How much
19 will I get paid for my works?" You see that?

20 A Yes.

21 Q The seminal question we're all here
22 for.

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1 A Right.

2 Q The answer is, it says, it starts out,
3 "The amount you'll get paid depends upon the
4 overall amount AGICOA collects in a given
5 country. The specific calculation of the amount
6 you will get is itself based on non-
7 discriminatory, objective criteria.

8 A Yes.

9 Q So clearly this is going to
10 potentially answer the question, what's the
11 criteria, right?

12 A Such as, are the next words.

13 Q Right, so "such as the duration of the
14 work." Period. So, obviously that's one of the
15 factors AGICOA used, is how long the program is,
16 correct?

17 A Correct. That is correct.

18 Q So right there we know that AGICOA is
19 not basing its distribution solely on ratings,
20 but at least in part on duration of the work. Is
21 that true?

22 A It is true. It would be impossible to

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1 pay solely on the ratings without a factor for
2 duration, otherwise how would you know when to
3 stop measuring the ratings?

4 Q All right. There is an excellent
5 point, why I think it's a good metric. The next
6 sentence begins, "A prime time retransmission of
7 a work with a duration of 60 minutes in an
8 important TV retransmission market like the
9 Netherlands would yield a larger amount than a
10 smaller market like Slovenia. Period.

11 And then the final sentence says,
12 "Also, a retransmission during prime time will
13 yield more than retransmission at any other
14 time."

15 JUDGE STRICKLER: Because it's at
16 other time, is that okay?

17 MR. BOYDSTON: Oh thank you. I'm
18 sorry. At other time.

19 THE WITNESS: Yes, again --

20 MR. BOYDSTON: We don't need to --
21 yes. Some of those ground rules moving quickly.

22 BY MR. BOYDSTON:

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1 Q Clearly that last sentence is
2 referring to a day part analysis. Would you
3 agree with me?

4 A I -- no. No. It refers to the
5 reality --

6 Q You don't know --

7 A No. It refers to the reality that
8 more people watch TV, and therefore the audience
9 rating or measurement would be greater in prime
10 time as a general rule. It's a website --

11 Q Right.

12 A -- reference.

13 Q Is it your testimony that the notion
14 that people watch more in prime time than 3
15 o'clock in the morning, are you saying that's not
16 a day part analysis?

17 A As a general rule, I think that's an
18 accurate way to reflect in a general way, the way
19 that the distribution process works.

20 Q I agree. To me that sounds like a day
21 part viewing analysis. Do you disagree?

22 A I do.

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1 MR. BOYDSTON: Okay. Nothing further.

2 JUDGE STRICKLER: Quick question for
3 you, Ms. Saunders. In the AGICOA document, there
4 is no reference to the use of ratings for
5 valuation -- for distribution purposes. Am I
6 right?

7 THE WITNESS: No sir. It is --
8 there's a reference to audience only. There is
9 no reference to ratings. That's correct.

10 JUDGE STRICKLER: If ratings are, in
11 fact, used for distribution purposes through
12 AGICOA, do you find it odd that there's no
13 reference to ratings at all in the document?

14 THE WITNESS: No, no. Because this
15 document was written by Francophones, or possibly
16 someone else who had it translated into English.
17 No, it doesn't strike me as odd at all.

18 JUDGE STRICKLER: How about, going
19 back to the document with regard to the Canadian
20 Collective.

21 THE WITNESS: There's no reference --

22 JUDGE STRICKLER: Now there's no

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1 reference to ratings at all, do you -- they --
2 sometimes they're Francophones and sometimes
3 they're not.

4 THE WITNESS: Yes. Not in this case.
5 Not in the case of the people that wrote those
6 rules. They're not Francophones.

7 JUDGE STRICKLER: So, do you find it
8 unusual or odd that there's no reference to
9 ratings at all in the Canadian Collective
10 document?

11 THE WITNESS: The reference to viewing
12 or viewership, I think, to me is equivalent, and
13 I am sure that that was simply a choice.

14 JUDGE STRICKLER: That you -- a choice
15 of language that you --

16 THE WITNESS: The -- yes, a choice of
17 language, excuse me, yes.

18 JUDGE STRICKLER: So you treat
19 viewership as equivalent --

20 THE WITNESS: Yes.

21 JUDGE STRICKLER: -- to ratings?

22 THE WITNESS: Yes.

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1 MR. BOYDSTON: I have nothing further,
2 Your Honor.

3 MR. MACLEAN: Your Honor, could I very
4 quickly cross again based on what's been asked
5 and what -- by Judge Strickler and Mr. Boydston?

6 JUDGE BARNETT: Oh yes, I'm sorry.

7 MR. MACLEAN: Can I do it from here?

8 JUDGE BARNETT: If you speak up.

9 MR. MACLEAN: Thank you. I will.

10 CROSS-EXAMINATION

11 BY MR. MACLEAN:

12 Q Ms. Saunders, could you -- and I
13 apologize, but could you remind me of what your
14 position is with the CCC?

15 A I am -- I supervise the executive
16 director of the CCC and all of the CCC staff.

17 Q In that capacity, you are in some
18 measure, and perhaps even a great measure,
19 responsible for much of the operations of the
20 CCC?

21 A I am fully responsible, along with the
22 executive director, for the operations of the

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1 CCC.

2 Q Does this -- in conducting this
3 process, this royalty distribution process, does
4 the CCC acquire ratings data?

5 A I believe that they do. I know that
6 -- you're asking me a hard one now, because I do
7 approve the budget, but they acquire broadcast
8 data and they -- I don't know the answer. I'm so
9 sorry. I would love to say yes. I'm sure that
10 the answer is yes. But I can't 100 percent.

11 They have to, but I can't recall. I'm so sorry.

12 Q Same question with respect to AGICOA,
13 do they acquire ratings?

14 A Yes. That I know of, because I'm on
15 the finance committee and I have to review and
16 approve the budget. Lucy does that for us at
17 CCC, reviews and approve the budget, or puts the
18 budget together.

19 Q Lucy?

20 A Medeiros, excuse me, yes, the
21 executive director.

22 Q So that AGICOA -- because you review

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1 and approve the budget, or because you
2 participate in the review and approval of the
3 budget, you know that AGICOR acquires ratings
4 data for use in this process?

5 A Yes, I do.

6 Q It is enormously expensive?

7 A It is enormously expensive.

8 Q Is there any reason why you would
9 acquire that enormously expensive data if you
10 were not going to use it?

11 A No. None that I can think of.

12 Q Thank you.

13 JUDGE STRICKLER: Could I have a
14 question for you, Ms. Saunders?

15 THE WITNESS: Yes.

16 JUDGE STRICKLER: With regard to
17 acquiring viewership ratings information as
18 counsel just asked you about, is that necessarily
19 separate and apart from making any determinations
20 as to value, in general? Is it also necessary,
21 when you're doing the simulcast allocations, to
22 have the viewership ratings?

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1 THE WITNESS: You would have to have
2 the incidence of retransmission of the signal
3 into the market, Your Honor. I don't know that
4 you would need to know how many viewers received
5 it in a market. Again, I am not 100 percent
6 sure. I apologize. I don't have a very good
7 familiarity with the simulcast.

8 JUDGE STRICKLER: I'm going back to
9 that penultimate sentence in Exhibit 163, which
10 says --

11 THE WITNESS: Yes, yes.

12 JUDGE STRICKLER: In the simulcast
13 context --

14 THE WITNESS: Yes.

15 JUDGE STRICKLER: Tell me when you're
16 with me. Okay?

17 THE WITNESS: Yes, yes.

18 JUDGE STRICKLER: The viewing weight
19 is then calculated by multiplying the simulcast
20 weight by viewing factors, which reflect the
21 relative amount of viewing --

22 THE WITNESS: Right.

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1 JUDGE STRICKLER: -- of CCC shows on
2 distant signals.

3 THE WITNESS: Right.

4 JUDGE STRICKLER: Et cetera. So if
5 for no other reason, anyway -- they may have
6 other reasons as well, but for no other reason,
7 am I correct that you would need ratings
8 information simply to perform the task that's
9 suggested in that second -- in that penultimate
10 sentence?

11 THE WITNESS: You would need ratings
12 information to perform the task in, that's
13 described here, but you would not -- I don't
14 think you would need -- and I'm a little bit out
15 of my expertise here, but I don't think you need
16 ratings specifically for the simulcast
17 determination because it has to do with the
18 market.

19 So the retransmission impact in a
20 market -- so the city is basically discounted, or
21 the reception zone of the signal is discount
22 whereas that part, that market is not included in

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1 determining the value of royalties that are going
2 to be distributed.

3 I'm saying this in a really confusing
4 way. I wish I could find a way to say it in a
5 less confusing way.

6 JUDGE STRICKLER: Well, it sounds to
7 me -- maybe I'm wrong, but the sentence speaks
8 for itself, because it says, "The viewing weight
9 is then calculated by multiplying the simulcast
10 weight by viewing factors, which reflect the
11 relative amount of viewing of CCC shows on
12 distant signals on the applicable day of the week
13 and during the applicable time period when the
14 retransmission occurred."

15 THE WITNESS: Right.

16 JUDGE STRICKLER: That sound to me,
17 anyway, like you're talking about ratings
18 necessary to see how much viewing was occurring
19 on the retransmitted station.

20 THE WITNESS: I agree with you. It
21 does sound that way. When I look up here to
22 simulcast weight, the definition of how it's

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1 determined, it says, "The simulcast weight is
2 determined by adjusting the supply weight." So I
3 think it -- that factor impacts the supply
4 weight.

5 In other words, if it's a two-hour --
6 if it's a one-hour show and it's retransmitted
7 twice, it doesn't get the full value of the two
8 hours, that's right.

9 JUDGE STRICKLER: My point was a much
10 more specific point in that which is simply that
11 counsel was trying to establish with you that you
12 acquire ratings information, and it may be the
13 case that you acquire ratings information for
14 that reason, not for any additional reason,
15 although it may be for an additional reason.

16 THE WITNESS: It could be. I'm going
17 to make it my personal mission to learn all about
18 simulcast weighting, as soon as I leave here
19 today.

20 JUDGE STRICKLER: Well that's all well
21 and good, but since you haven't done -- made it
22 your personal mission yet --

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1 THE WITNESS: I have not.

2 JUDGE STRICKLER: That doesn't help me
3 a whole lot, does it?

4 THE WITNESS: I have not. I'm so
5 happy everyone asked me all these questions about
6 it.

7 JUDGE BARNETT: Anything further, Ms.
8 Plovnick?

9 MS. PLOVNICK: I have nothing further,
10 Your Honor.

11 JUDGE BARNETT: Anything further based
12 on Judge Strickler's questions?

13 MR. BOYDSTON: No, Your Honor.

14 MR. MACLEAN: No, Your Honor.

15 JUDGE BARNETT: Thank you, Ms.

16 Saunders. You may step down.

17 (Witness excused)

18 JUDGE BARNETT: Ms. Plovnick, you have
19 one more witness today?

20 MS. PLOVNICK: Yes. So the MPAA calls
21 Jonda Martin.

22 MR. BOYDSTON: Your Honor, for the

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1 record, we have the same objection to Ms. Martin
2 as we do to Ms. Saunders. The circumstances are
3 the same, therefore we object to Ms. Martin's
4 testimony.

5 MS. PLOVNICK: Your Honor, the
6 circumstances are actually not the same. Ms.
7 Martin's direct testimony was admitted by
8 stipulation by IPG, and then when Mr. Galaz
9 testified yesterday he went at length to
10 criticize Ms. Martin's testimony orally. In his
11 written rebuttal statement, all he simply does is
12 reference, at least the one directed at MPAA,
13 simply just references IPG Exhibit 150 and
14 doesn't have any further analysis or description.

15 But yesterday in oral testimony he
16 went at length to go and really challenge Ms.
17 Martin's credibility and the credibility of her
18 data, which is a part of MPAA's analysis. So we
19 are calling her as a rebuttal witness to respond
20 to that oral testimony of Mr. Galaz yesterday.

21 MR. BOYDSTON: Your Honor, the
22 situation is slightly different as Ms. Plovnick

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1 stated, because Ms. Martin did present a written
2 statement. However, we are not challenging the
3 issues about the CDC data that we brought up
4 yesterday have nothing to do with any challenge
5 of ours at the MPAA. That's why there's nothing
6 in our written statement or rebuttal statement
7 attacking the MPAA's use of the CDC data.

8 We have no problem with their use of
9 the CDC data in any condition. So -- and we'll
10 agree to that here and now if it will take care
11 of Ms. Jonda's, Ms. Martin's testimony. We have
12 no challenge to the MPAA's use of the CDC data.
13 MS. PLOVNICK: I'm a little confused
14 because -- so we perceived that the testimony
15 that Mr. Galaz stated yesterday to be directed at
16 Ms. Martin and her credibility and her CDC data
17 and analysis.

18 MR. BOYDSTON: No, it's not.

19 MS. PLOVNICK: This is not what --

20 MR. BOYDSTON: No, it's not. Your
21 Honor, the MPAA only uses the CDC data in the
22 process of choosing its satellite station lineup

Certificate of Service

I hereby certify that on Thursday, April 05, 2018 I provided a true and correct copy of the Designated Prior Testimony of Jane V. Saunders, Oral Testimony in Consolidated Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II), Transcript pp. 220-66 (April 15, 2015). to the following:

Devotional Claimants, represented by Benjamin S Sternberg served via Electronic Service at ben@lutzker.com

Independent Producers Group (IPG), represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

Signed: /s/ Lucy H Plovnick